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enjoyed by the customers of today. Because the number, identity, and market share of petitioners' customers change each year, it is virtually certain that those who end up paying the piper would not be those that enjoyed the show. In contrast, an accounting or escrow order ensures that burdens and obligations are distributed in perfect measure. Compensation is delivered precisely to the parties that deserve it -- and at the expense of those that should pay.

B. Imposition of a Stay and Escrow Mechanism Will Not Harm Other Parties or the Public Interest

Similarly, the imposition of a stay in these circumstances will not harm other parties. Certainly the interexchange carriers will suffer no detriment. If the Commission's order is affirmed on appeal, they will be restored to their pre-stay financial position through distribution of the difference between the amount they actually paid and the amount they would have paid absent a stay, plus interest. Nor will the public at large suffer from higher prices as a result. If the interexchange market is competitive as the Commission contends, Price Cap Order at 27, ¶ 61, competitive forces will impel interexchange carriers to reduce their prices to account for the anticipated recovery of any sums subject to the accounting order or placed in the escrow account.¹⁵

¹⁵Thus, if one assumes that the interexchange carriers have 100 percent confidence in recovering the money placed in escrow or subject to the accounting order, they will behave as if the rate changes had already gone into effect. For example, an interexchange carrier that pays ten cents in access charges, of which 1 cent is traceable to the stay and therefore subject to

Indeed, it seems that the interests of both the public and the interexchange carriers strongly favor granting interim relief. Absent a stay, any risk of irreparable injury not borne by petitioners will be borne by the interexchange carriers and the public instead.¹⁶ Moreover, as explained above (at pp. 24-25), a stay plus an accounting order or escrow mechanism will ensure a more equitable distribution of compensation and costs than would any other conceivable method of making petitioners whole.

Finally, it should be noted that the public interest strongly favors prompt disposition of this motion. Each day the order is left in effect is a day that the LECs and the Commission must spend on tariffs that may need to be entirely redone. Moreover, petitioners anticipate seeking a judicial stay absent timely administrative relief. So that the Court may have

remittance, will behave as if access charges were only 9 cents.

¹⁶If the LECs prevail on appeal and competitive forces preclude them from recouping their losses through prospective price increases, the LECs might be entitled to recoup their losses retroactively from their customers. In Natural Gas Clearing House v. FERC, 965 F.2d 1066, 1073-75 (1992), the D.C. Circuit permitted just that to occur. There, the pipeline company was permitted to recover directly from shippers the amount of revenues lost as result of an erroneous FERC decision. If that same principle were applied here, reversal could subject petitioners' customers to millions of dollars in liability. If the Commission is correct that these customers are subject to competitive forces, they, like petitioners, would find it difficult to recover those losses through prospective rate increases. If an escrow account were established or an accounting order put in place, in contrast, there would be no risk that this irreparable harm would befall petitioners' customers. Instead, the only question would be how to distribute the funds placed into escrow or subject to the accounting.

sufficient time to review any such motion before petitioners' 1995 annual access filings become effective on August 1, 1995, petitioners respectfully request that the Commission rule on this request no later than June 15, 1995.

Conclusion

In light of the foregoing, it should not be difficult for the Commission to conclude that it indeed has decided a "difficult legal question" and that the equities favor the relief sought. 559 F.2d at 844. Accordingly, the petition should be granted.

Respectfully submitted,



MICHAEL E. GLOVER
EDWARD SHAKIN
1320 N. Courthouse Road
8th Floor
Arlington, VA 22201
(703) 974-2944
*Counsel for Bell Atlantic
Network Services*

MARK L. EVANS
JEFFREY A. LAMKEN
KELLOGG, HUBER, HANSEN, TODD & EVANS
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005
(202) 326-7900
Counsel for Joint Petitioners

ROBERT M. LYNCH
DURWARD D. DUPRE
THOMAS A. PAJDA
One Bell Center
Room 3532
St. Louis, MO 63101
(314) 235-2507
*Counsel for Southwestern Bell
Telephone Company*

May 9, 1995

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Price Cap Performance Review)
for Local Exchange Carriers)

CC Docket 94-1

In the Matter of)

Price Cap Regulation of)
Local Exchange Carriers)

CC Docket 93-179

Rate-of-Return Sharing)
and Lower Formula Adjustment)

DECLARATION OF HOWARD F. ZUCKERMAN

I, Howard F. Zuckerman, declare the following:

1. I am Vice President-Finance for Bell Atlantic's Carrier Services Line of Business. My responsibilities encompass management and oversight of various financial functions, including planning, reporting, analysis and assurance for the operations of the Carrier Services Line of Business. This line of business is responsible for managing the switched and special access products and services offered by Bell Atlantic's seven operating telephone companies, including the interstate services that are regulated by the Federal Communications Commission. As part of my responsibilities, I am familiar with the Commission's regulation of our prices and the market conditions for our products and services.

2. In this capacity, I am familiar with the impact on Bell Atlantic's interstate revenues of the First Report and Order in Common Carrier Docket 94-1, released by the Commission on April 7, 1995 ("Price Cap Order"), and with the impact of a related Report and Order in Common Carrier Docket 93-179, released by the Commission on April 14, 1995 ("Add Back Order").

3. The Commission's Price Cap Order modifies the price cap plan under which Bell Atlantic and certain other local exchange carriers ("LECs") are regulated. Among other things, the Order requires these LECs to reduce their current price cap index, which sets the maximum price they can charge for interstate services, by 0.7 percent for each of the previous four years of price cap regulation in which they elected a productivity offset of 3.3 percent. In Bell Atlantic's case, this requirement produces a 2.8 percent reduction in its price cap index. In addition, the Commission established three new price cap options the LECs must choose among, each of which incorporates a productivity offset that is higher than the 3.3 percent offset included in the original price cap plan. The new offsets are 4.0, 4.7 and 5.3 percent. The effect of these higher offsets is to increase the annual amount by which LECs are required to reduce their price cap indexes by 0.7, 1.4 and 2.0 percent, respectively. Finally, the Order requires a further downward adjustment in the price cap index to remove the effect of exogenous treatment that previously was afforded to costs associated with the implementation of certain accounting rule

changes, such as Statements of Financial Accounting Standards (SFAS)- 106 and 112. These reductions must be reflected in tariffs that will go into effect on August 1, 1995.

4. For each of these reductions in the price cap index that is required by the Price Cap Order, I have calculated the revenue impact on Bell Atlantic. For purposes of making this calculation, I have assumed that the demand for Bell Atlantic's interstate services remains unchanged from 1994 levels, and that all such services will be priced at the maximum amount allowed by the price cap rules. Based on Bell Atlantic's projections, this calculation understates the loss in revenue that will result from the Commission's Order. In particular, demand for Bell Atlantic's interstate services is expected to grow in the coming year. Since the lower prices dictated by the Order will produce lower revenues from this increase in volumes than would otherwise be the case, this growth will add to the amount of lost revenues calculated here. Also, I have calculated the revenue effect for only a single year, and the amounts would be greater if the Order is extended to future years.

5. The impact of each of these three changes on Bell Atlantic's interstate revenues during the tariff year is as follows:

a. The 2.8 percent reduction in Bell Atlantic's price cap index will produce a reduction of \$78.8 million.

b. The new productivity offsets will produce an additional reduction of over \$2.7 million for each one-tenth of a

percentage point increase in the offset. This translates to a revenue reduction of \$18.9 million under a 4.0 percent offset, \$38.8 million under a 4.7 percent offset, and \$55.8 million under a 5.3 percent offset.

c. Removing the effect of exogenous treatment for accounting changes such as SFAS 106 and 112 will reduce revenue by \$20.0 million.

6. In addition to these changes, the Commission's Add Back Order changed the way Bell Atlantic and other LECs are required to calculate their earnings for purposes of determining their sharing obligation under price caps. Starting with the calculation of their sharing obligation based on 1994 earnings (which will be reflected in the tariffs that take effect August 1, 1995), the LECs must "add back" the impact of the previous year's sharing. In practice, this means any amount by which 1994 revenues were reduced because of a sharing obligation from 1993 earnings is added to the amount of revenues that were actually received in 1994. In other words, for purposes of calculating its 1994 sharing obligation, the LEC is assumed to have received revenues that it did not actually receive. The effect is to increase the LEC's sharing obligation for 1994, and to increase the amount by which its price cap index must be reduced in 1995 as a result of this sharing obligation.

7. A simple example explains the operation of this requirement. If a LEC earned \$20 million that fell within the sharing range in 1993, it would reduce its price cap index by \$10

million in 1994 in order to share half this amount with customers. For purposes of calculating 1994 earnings, however, the LEC must assume it received the \$10 million that was shared with customers, and this amount is added to what it actually earned. If the LEC's earnings otherwise remain in the 50/50 sharing range in 1994, this means that its sharing obligation will be \$5 million more than would otherwise be the case, or half of what it supposedly was allowed to retain from 1993's earnings. The process repeats itself in 1995 when, assuming the LEC again remains in the 50/50 sharing range, it must add the \$5 million to its earnings (in addition to any amounts that were shared based on earnings it actually received in 1994) and share an additional \$2.5 million of the amount it supposedly was allowed to retain from 1993's earnings. This process continues year-over-year, and the effect over time is to require the LEC to return essentially all the earnings that fell within the sharing range in 1993.

8. I have calculated the effect of the Add Back Order on Bell Atlantic's interstate revenues based on the assumptions outlined above. This calculation shows that for the first year alone, the add back requirement will produce an incremental revenue reduction of \$17.4 million.

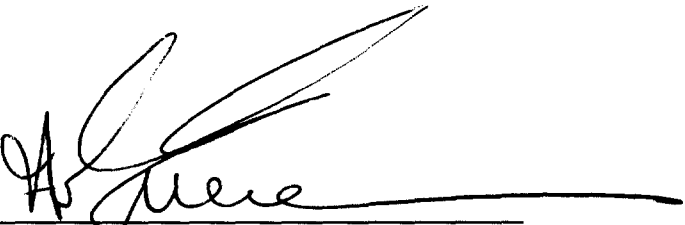
9. Absent a stay or the establishment of an escrow fund, Bell Atlantic is unlikely to be able to recoup the lost revenues described above in the event the Commission's Orders are overturned on appeal. As previously explained in detail in the Affidavit of Richard Beville (filed May 9, 1994) and elsewhere in

the record of this proceeding, many of Bell Atlantic's interstate services already are subject to competitive pressures that constrain the prices that can be charged for these services. This is particularly true in the case of high capacity access services that are purchased by large business customers, which already face substantial competition from competitive access providers, interexchange carriers, cable companies, utility companies and the customer's own private networks. Moreover, the scope and intensity of this competition is increasing rapidly, and will continue to do so as these existing competitors provide an expanding array of competing telephone services, and as new competitors such as wireless personal communications services begin operation. The effect of this increasing competition will be to put increased pressure on price levels.

10. Given these market conditions, obtaining permission from regulators to increase prices in an effort to recoup the lost revenues described above would be a largely illusory remedy. Assuming the Orders were in effect for only a single year, the lost revenues would total well over \$100 million. In order to recoup losses of this magnitude, prices would have to be increased significantly above those in effect today. The notion that the marketplace would permit price increases of this magnitude in the future is simply not realistic. As a result, Bell Atlantic would be unable to recover these losses and would be irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 8, 1995



Howard F. Zuckerman

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Price Cap performance Review)
for Local Exchange Carriers) CC Docket 94-1
)

DECLARATION OF DALE R. KAESHOEFER

I, Dale R. Kaeshoefer, declare the following:

1. I am General Manager-Carrier Marketing for Southwestern Bell Telephone Company (SWBT). My responsibilities encompass management and oversight of various functions, including market planning and analysis, service development and pricing for the Carrier Marketing Line of Business. This line of business is responsible for managing the switched and special access services offered by SWBT, including the interstate services that are regulated by the Federal Communications Commission. As part of my responsibilities, I am familiar with the Commission's regulation of our services, including the effects of that regulation on prices and revenues, and the market conditions for our products and services.

2. In this capacity, I am familiar with the effects on SWBT of the First Report and Order in Common Carrier Docket 94-1, released by the Commission on April 7, 1995 ("Price Cap Order").

3. The Commission's Price Cap Order significantly modifies the price cap plan under which SWBT and certain other local exchange carriers ("LECs") are to be regulated. The Order requires the price cap LECs to reduce their current price cap

indexes, by 0.7% for each of the four years of price cap regulation in which they elected the minimum productivity offset of 3.3%. For SWBT, this Commission action requires a 2.8% reduction in its price cap indexes.

Also, the Commission ordered three new productivity offset options from which the LECs must now choose. Each of these options includes a productivity offset higher than the 3.3% offset included in the original LEC price cap plan. The new offsets are 4.0%, 4.7% and 5.3%. These higher offsets require the price cap LECs to reduce their price cap indexes by an additional 0.7%, 1.4% and 2.0% respectively. In addition, the Order requires an additional reduction in price cap indexes to remove exogenous treatment of certain accounting rule changes, such as SFAS-106. These reductions must be reflected in tariffs that will go into effect on August 1, 1995.

4. For each of these reductions in price cap indexes required by the Price Cap Order, my staff has calculated the revenue effects on SWBT. These calculations conform to all relevant Commission rules and procedures regarding price cap regulation. Due to the large magnitude of price reductions required, our calculations assume average price levels at the maximum levels allowed by the newly revised price cap rules.

5. SWBT's interstate revenues would be affected by these changes during the first year as follows:

a. The 2.8% reduction in SWBT's price cap indexes decreases revenues by \$55.7 million.

b. The increased productivity offsets will produce

an additional reduction of almost \$2 million for each one-tenth of a percentage point increase in the offset. This causes a reduction in revenue of \$13.8 million under a 4.0% offset, \$27.6 million under a 4.7% offset, and \$39.4 million under a 5.3% offset.

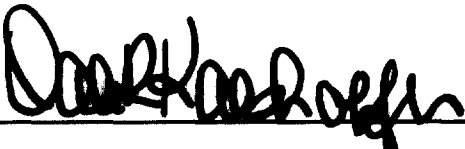
c. Removing the effect of exogenous treatment for accounting changes such as SFAS 106 will reduce revenue by \$40.5 million.

6. Without a stay or the establishment of an escrow fund, it is uncertain whether SWBT will be able to recoup the lost revenues described above in the event the Commission's Order is overturned on appeal. As previously explained in detail in the record of this proceeding, many of SWBT's interstate services already are subject to growing competitive pressures that constrain the prices that can be charged for these services. High capacity access services already face competition from competitive access providers, interexchange carriers, cable companies, utility companies and customer's own private networks, and are particularly susceptible to these pressures. The scope and intensity of this competition is increasing, and will continue. These competitors provide an expanding array of competing telephone services, and new competitors such as wireless personal communications services will soon begin operation.

7. Under these market conditions, a later grant of permission from the Commission to increase prices in an effort to reclaim the lost revenues described above could be an ineffective

remedy. Assuming the Price Cap Order was in effect for only a single year, the lost revenues would total approximately \$110 million. In order to recoup losses of this magnitude, prices would have to be increased significantly above the rates in effect today, before the mandated reductions. In the future that would require interim price increases of about \$220 million, essentially twice the reduction ordered by the Commission those in effect today. Absent a stay or the creation of an escrow fund, the Commission can provide no assurance that the marketplace would permit price increases of this magnitude in the future. As a result, it is extremely uncertain whether SWBT would be able to recover these losses, and would thus be irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on May 6, 1995.


Dale R. Kaeshoefer

CERTIFICATE OF SERVICE

I, Kathleen Joseph, hereby certify that on this 9th day of May, 1995, copies of the foregoing Joint Petition for a Partial Stay and for Imposition of an Escrow or Accounting Mechanism Pending Judicial Review, together with the supporting affidavits and Certificate of Service, were caused to be served by first-class mail, postage prepaid, upon the parties listed on the attached service list.



Kathleen Joseph

Tariff Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554
(two copies)

Geraldine Matise
Tariff Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554

ITS, Inc.
1919 M Street, NW
Room 246
Washington, D.C. 20554

James L. Wurtz
Pacific Telesis Group
1275 Pennsylvania Avenue, NW
Washington, D.C. 20004

Edward R. Wholl
Campbell L. Ayling
Edward E. Niehoff
NYNEX Telephone Companies
120 Bloomingdale Road
White Plains, NY 10605

James P. Tuthill
John W. Bogy
Pacific Bell Mobile Services
4420 Rosewood Drive, Bldg. 2
4th floor
Pleasanton, CA 94588

Michael S. Pabian
Ameritech
2000 W. Ameritech Center Drive
Room 4H76
Hoffman Estates, IL 60196

Gary M. Epstein
James H. Barker
Latham & Watkins
Suite 1300
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004-2505

James T. Hannon
Sharon L. Naylor
U S West Communications, Inc.
Suite 700
1020 19th Street, NW
Washington, D.C. 20036

Lawrence P. Keller
Cathey, Hutton & Associates
3300 Holcomb Bridge Road
Suite 286
Norcross, GA 30092

Michael J. Shortley, III
Rochester Telephone Corp.
180 South Clinton Avenue
Rochester, NY 14646

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Telecommunications
4300 Southern Bell Center
675 West Peachtree Street, NE
Atlanta, GA 30375

Mary McDermott
VP and General Counsel
USTA 1401 H Street, NW
Suite 600
Washington, D.C. 20005

David Cosson
NTCA
2626 Pennsylvania Avenue, NW
Washington, D.C. 20037

Thomas E. Taylor
Christopher J. Wilson
Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202

Margot Smiley Humphrey
Koteen & Naftalin
1150 Connecticut Avenue, NW
Suite 1000
Washington, D.C. 20036

Lisa M. Zaina
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, D.C. 20036

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW
Suite 1200
Washington, D.C. 20036

Philip F. McClelland
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Brian R. Moir
Moir & Hardman
2000 L Street, NW
Suite 512
Washington, D.C. 20036

Robert A. Mazer
Nixon, Hargrave, Devans &
Doyle
One Thomas Circle, NW
Suite 800
Washington, D.C. 20005

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

David C. Bergman
Yvonne T. Ranft
Office of the Consumer's
Counsel
State of Ohio
77 South High Street
15th Floor
Columbus, OH 43266-0550

Tenley A. Carp
Office of the General Counsel
GSA
18th & F Streets, NW
Room 4002
Washington, D.C. 20405

Henry M. Rivera
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, NW
Washington, D.C. 20036

James Gattuso
Beverly McKittrick
Citizens for a Sound
Economy Foundation
1250 H Street, NW
Washington, D.C. 20005

Carol C. Henderson
Executive Director
American Library Association
110 Maryland Avenue, NE
Washington, D.C. 20002

Charles A. Zielinski
Rogers & Wells
607 14th Street, NW
Washington, D.C. 20005

Jonathan E. Canis
Swidler & Berlin
3000 K Street, NW
Suite 300
Washington, D.C. 20007

Dr. Jerome R. Ellig
Center for Market Processes
4084 University Drive
Suite 208
Fairfax, VA 22030

Allan J. Arlow
President & CEO
Computer & Communications
Industry Association
666 11th Street, NW
Washington, D.C. 20001

John C. Smith
General Counsel
Aeronautical Radio, Inc.
2552 Riva Road
Annapolis, MD 21401

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin
3000 K Street, NW
Washington, D.C. 20007

R. Michael Senkowski
Jeffrey S. Linder
Ilene T. Weinreich
Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006

Marc E. Manly
Sidley & Austin
1722 I Street, NW
Washington, D.C. 20006

Jay C. Keithley
Leon M. Kestenbaum
H. Richard Juhnke
Norina T. Moy
Sprint Corporation
1850 M Street, NW
11th Floor
Washington, D.C. 20036

Paul B. Jones
Janis A. Stahlhut
Time Warner Communications
300 First Stamford Place
Stamford, CT 06902

J. Manning Lee
Teleport Communications Group
One Teleport Drive
Staten Island, NY 10311

Mark C. Rosenblum
Robert J. McKee
Peter H. Jacoby
Albert M. Lewis
AT&T
Room 2255F2
295 North Maple Avenue
Basking Ridge, NJ 07920

Elizabeth Dickerson
Manager, Federal Regulatory
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, NW
Washington, D.C. 20006

W. Richard Morris
Sprint Corporation
P.O. Box 11315
Kansas City, MO 64112

David R. Poe
Cherie R. Kiser
LeBoeuf, Lamb, Greene & MacRae
1875 Connecticut Avenue, NW
Washington, D.C. 20009

Genevieve Morelli
CompTel Association
1140 Connecticut Avenue, NW
Suite 220
Washington, D.C. 20036

Danny E. Adams
Jeffrey S. Linder
Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006

Dr. Lee L. Selwyn
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108

Joseph Miller
WilTel, Inc.
P.O. Box 21348
Tulsa, OK 74121

W. Theodore Pierson, Jr.
Richard J. Metzger
Douglas J. Minster
Pierson & Tuttle
1200 19th Street, NW
Suite 607
Washington, D.C. 20036

Brian D. Thomas
Assistant Vice President
Pacific Telecom, Inc.
805 Broadway
Vancouver, WA 98668

James Blaszk
Levine, Blaszk, Block &
Boothby
1300 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20036

Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson
Columbia Square
555 13th Street, NW
Washington, D.C. 20004

Heather Burnett Gold
ALTS
1200 19th Street, NW
Suite 607
Washington, D.C. 20036

Wayne V. Black
C. Douglas Jarrett
Keller & Heckman
1001 G Street, NW
Suite 500 West
Washington, D.C. 20001

Janice Obuchowski
Halprin, Temple & Goodman
1100 New York Avenue, NW
Suite 650 East
Washington, D.C. 20005

Leonard J. Kennedy
Steven F. Morris
Dow, Lohnes & Albertson
1255 23rd Street, NW
Suite 500
Washington, D.C. 20037

Aliceann Wohlbruck
National Association of
Development Organizations
444 N. Capitol Street, NW
Suite 630
Washington, D.C. 20001

Werner K. Hartenberger
Laura H. Phillips
Dow, Lohnes & Albertson
1255 23rd Street, NW
Suite 500
Washington, D.C. 20037

Herbert E. Marks
Jody Daniel Newman
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Stephen L. Goodman
William F. Maher, Jr.
Halprin, Temple & Goodman
1100 New York Avenue, NW
Suite 600 East
Washington, D.C. 20005

Rochelle D. Jones
SNET
227 Church Street
New Haven, CT 06506-1806

Randy R. Klaus
MCI Telecommunications Corp.
701 Brazos Street, Suite 600
Austin, TX 78701

Dan Grosh
Tariff Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554